

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of GOW Corporation and  
Great Oaks Water Company (U162W) for  
Authority to Acquire and Control Great  
Oaks Water Company.

Application 14-04-035  
(Filed April 22, 2014)

**DECISION GRANTING JOINT MOTIONS FOR ADOPTION OF THE  
SETTLEMENT AGREEMENT AND ADMITTING TESTIMONY, STIPULATIONS,  
AND EXHIBITS INTO THE RECORD****Summary**

This decision grants two joint motions of GOW Corporation, Great Oaks Water Company (GOWC) and the Commission's Office of Ratepayer Advocates (collectively, the Parties). The first joint motion requests that the Commission adopt a settlement agreement between the Parties (Settlement Agreement) and the second requests that the testimony, stipulations and exhibits of the Parties be entered into the record.

The Settlement Agreement provides for the acquisition of GOWC by GOW Corporation and, among other provisions, includes a corporate reorganization resulting in the separation of assets, liabilities, and operations regulated by the Commission from assets, liabilities, and operations that are not regulated by the Commission.

This proceeding is closed.

## 1. Background

On April 22, 2014, Great Oaks Water Company (GOWC) and GOW Corporation (Corporation) (collectively, Applicants) filed Application (A.) 14-04-035, requesting that Corporation be allowed to acquire and control GOWC. Attached to the application as Exhibit A were a Contribution Agreement and Plan of Reorganization. On June 4, 2014, the Office of Ratepayer Advocates (ORA) filed its protest to the application. On June 6, 2014, Applicants filed a reply to ORA's protest. A Prehearing Conference (PHC) was held on July 1, 2014, and at that time GOWC, the Corporation, and ORA (collectively, the Parties) reported to the assigned Administrative Law Judge (ALJ) that they had already made significant progress toward a resolution of the issues outlined in ORA's protest. A scoping memo was not issued but Parties were directed to report progress on the settlement negotiations to the assigned ALJ on August 1, 2014. On August 1, 2014, Parties reported that they had reached a settlement and were preparing a settlement document.

On September 9, 2014, a Notice of Settlement Conference, to be held on for September 17, 2014, was served, pursuant to Rule 12.1(b) of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup>

The settlement agreement (Settlement) was executed on September 19, 2014, and the Joint Motion to Adopt the Settlement was filed on October 2, 2014.<sup>2</sup>

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<sup>1</sup> All referenced Rules are the Commission's Rules of Practice and Procedure found at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K380/89380172.PDF>

<sup>2</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M112/K006/112006533.PDF>.

The Joint Motion to Admit Testimony, Stipulations and Exhibits into the record was concurrently filed on October 2, 2014.<sup>3</sup>

## **2. Other Procedural Issues**

### **2.1. Change in Determination on Need for Hearings**

The initial categorization of this proceeding was ratesetting with a determination that hearings were necessary. However, the proposed settlement is governed by Rule 12.3, which provides that no hearings are necessary if there are no material contested issues of fact or if the contested issue is one of law. After review of the Joint Motion and other filed documents in the record, we have determined that no material contested issues of fact remain and conclude that no hearing is required. We therefore change the preliminary determination so that no hearings are necessary.

### **2.2. Admission of Testimony, Stipulations, and Exhibits into the Record**

By joint motion, Parties asked that a series of stipulations be included in the record of this proceeding and serve as a partial basis for the full settlement of all issues presented. All testimony, stipulations, and exhibits are hereby admitted into evidence.

## **3. Overview of the Settlement Agreement**

In addition to stipulated facts, the Settlement addresses the following provisions:

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<sup>3</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M112/K116/112116156.PDF>.  
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M112/K616/112616709.PDF>  
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M111/K693/111693647.PDF>

1. Compliance with Statutory Requirements. A.14-04-035 seeks authority for an indirect transfer of control over GOWC pursuant to Pub. Util. Code § 854, which requires Commission approval before any person or corporation merges, acquires, or controls any public utility organized and doing business in the State of California.
2. The Reorganization is in the Public Interest. The reorganization which is the subject of A.14-04-035 does not adversely affect the public interest, but rather serves the public interest because it separates regulated assets, liabilities, and operations from unregulated assets, liabilities, and operations owned by GOWC and will simplify reporting to and regulation of GOWC by the Commission, all without any cost or detriment to ratepayers or water service provided by GOWC.
3. Application of Commission Affiliate Transaction Rules. The Parties agree that the Commission's Affiliate Transaction Rules (as adopted in D.10-10-019) and Resolution W-4984 apply, and that GOWC and Corporation are required to comply with such rules.
4. Audit. The Parties expressly agree that an independent audit shall be performed and a report on such audit shall be submitted to the Commission's Division of Water and Audits and to ORA on or before September 30, 2015. The audit report shall include financial information on the acquisition and reorganization and compliance with the Affiliate Transaction Rules, including financial information regarding the assets, liabilities, and any other tangible property distributed from GOWC to Corporation under the Contribution Agreement.
5. Application and Settlement Raise No Safety Concerns. The Parties agree that the reorganization, which is the subject of A.14-04-035, and this Settlement do not raise any concerns that would impede or prevent Great Oaks from ensuring the safety of its patrons, employees, or the public.
6. Jurisdictional Matters. The Parties agree that the Settlement shall be governed by and construed in

accordance with the laws of the State of California. Parties further agree to submit any claim, dispute, or request for relief regarding the Settlement to the Commission for resolution in the first instance, and that if judicial relief is sought Parties will file their request only in the courts of the State of California.

#### **4. Settlement Standard of Review**

The Applicants bear the burden of proof to show that the regulatory relief requested is just and reasonable.

The Settlement addresses all contested issues in this proceeding. In order for the Commission to determine whether a proposed settlement is in the public interest, the Commission must be convinced that the Parties have a sound and thorough understanding of the application and of all the underlying assumptions and data in the record. These requirements are set forth in Rule 12.1(a) which states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant....

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

We address below whether the Settlement meets these requirements.

#### **4.1. Does the Settlement Meet the Standard of Review for Settlements**

The Settlement is supported by the record, which consists of all filed documents, the Settlement and the motion for its adoption. The Settlement resolves all issues in the application. There is public policy favoring the settlement of disputes to avoid costly and protracted litigation.<sup>4</sup> As long as a settlement, taken as a whole, is reasonable in light of the record, consistent with law, and in the public interest, it may be adopted. The Settlement meets each of the Commission's criteria for approval of settlements.

#### **4.2. The Settlement is Reasonable in Light of the Whole Record**

The Settlement is reasonable in light of the whole record because it takes into account all of the evidence presented and the stipulations of the Parties, as

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<sup>4</sup> Decision (D.) 88-12-083, 30 CPUC 2d 189, 221.

well as the interests of all Parties. The Settlement specifically takes into account all aspects of the Commission's affiliate transaction rules, including the recently approved provisions in accord with Rule VII.E. of the Affiliate Transaction Rules, adopted in Resolution W-4984, by specifically incorporating provisions from Resolution W-4984 into the Parties' stipulations in Section 2.12.25 of the Settlement. The Parties have jointly moved for the admission of all testimony and supporting exhibits for purposes of establishing the record in the proceeding. Based upon the entirety of the Parties' testimony and supporting exhibits, the Settlement is reasonable and fair in light of the whole record.

#### **4.3. The Settlement Does Not Contravene Any Rules or Laws**

There is no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement. The Parties are represented by counsel and have reviewed the Application for legal compliance. As noted in the Settlement, no Party is aware of any conflicts with applicable Commission decisions that would arise from approval of the Settlement. The application does not propose a "project" under the California Environmental Quality Act and therefore does not require an environmental impact review. In addition, the Application complies with all statutory requirements of the Public Utilities Code, including the requirements of Public Utilities Code §854(a).

The Settlement is consistent with the law.

#### **4.4. The Settlement Is In the Public Interest**

A settlement which commands broad support among participants fairly reflective of the affected interests and does not contain terms which contravene statutory provisions or prior Commission decisions serves the public interest.<sup>5</sup>

The Settlement is in the public interest because it will result in more efficient regulation of GOWC without additional regulatory costs and without any disruption in service. First, GOWC will continue to operate as it has in the past, using the same name, operating authority, and existing tariffs. Second, GOWC will continue to possess the technical, managerial and financial resources necessary to provide its authorized services. Third, the Commission's affiliate transaction rules and conditions will remain in effect.

As the Commission has stated, "[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation."<sup>6</sup> The Settlement satisfies this public policy preference for several reasons. First, the sponsors of the Settlement represent the interests of Applicants and their customers. Thus, the Parties represent the interests of shareholders and ratepayers that have an interest in the service provided by the Applicants. Second, the Settlement serves the public interest by resolving competing concerns in a collaborative and cooperative manner. By reaching agreement, the Parties avoid the costs of further litigation in this proceeding, and eliminate the possible litigation costs for rehearing and appeal. Third, approval of the Settlement provides speedy and complete resolution of the issues. Thus, the

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<sup>5</sup> D.13-05-027, at p.17 (citing *Re San Diego Gas & Elec.*, D.92-12-019)

<sup>6</sup> *Re PG&E*, D.88-12-083, 30 CPUC 2d 189, 221.



Settlement meets the applicable settlement standards of Rule 12.1(d) and, therefore, should be accorded the same deference the Commission accords settlements generally. The Settlement should be adopted.

The Settlement is binding on all Parties to the proceeding. However, pursuant to Rule 12.5, the Settlement does not bind or otherwise impose a precedent in this or any future proceeding. We specifically note, therefore, that Applicants must not presume in any subsequent application that the Commission would deem the outcome adopted herein to be presumed reasonable and they must, therefore, fully justify every request and ratemaking proposal without reference to, or reliance on, the adoption of the Settlement.

## **5. Categorization and Need for Hearings**

This proceeding was initially categorized as “Ratesetting” and it was preliminarily determined that hearings were required. As discussed above, we change the preliminary determination and finally determine that no hearings are necessary.

## **6. Waiver of Comment Period**

Pursuant to Rule 14.7(a)(1) of the Commission’s Rules, this decision is exempt from the 30-day comment period because the decision is on an uncontested matter where the filing or matter pertains solely to one or more water corporations as defined in Public Utilities Code § 241.

## **7. Assignment of Proceeding**

The assigned Commissioner for this proceeding is Michel P. Florio. The assigned Administrative Law Judge Pro Tem is Junaid A. Rahman.

## **Findings of Fact**

1. On October 2, 2014, GOW Corporation, GOWC, and the ORA filed a Joint Motion requesting approval of the Settlement.

2. The record for the Settlement is composed of the application, testimony of the parties and all other filings.

3. All issues in this proceeding are addressed and resolved by the Settlement.

4. The parties to the Settlement are all of the active parties in this proceeding.

5. The parties fairly reflect the affected interests.

### **Conclusions of Law**

1. The categorization of the need for hearings should be changed to “no hearings are necessary.”

2. The Applicants bear the burden of proof to show that their requests are reasonable.

3. The Settlement fairly balances the interests of the Applicants and ratepayers.

4. The Settlement is reasonable in light of the whole record.

5. The Settlement is consistent with the law and does not contravene or compromise any statutory provisions or prior Commission decisions.

6. The Settlement taken as a whole is in the public interest.

7. The Settlement meets the criteria for approval of settlements in Rule 12.1(d).

8. The motion of the Parties for adoption of the Settlement should be granted.

**O R D E R**

**IT IS ORDERED** that:

1. The Settlement Agreement Between the GOW Corporation, Great Oaks Water Company, and the Office of Ratepayer Advocates , as set forth in the in the Joint Motion of GOW Corporation, Great Oaks Water Company, and the Office of *Ratepayer Advocates for Adoption of Settlement Agreement*, dated October 2, 2014, is approved.

2. The testimony, stipulations, and exhibits served by GOW Corporation, Great Oaks Water Company (GOWC), and the Office of Ratepayer Advocates (ORA) in Application 14-04-035 as set forth in the Joint Motion of GOW Corporation, GOWC, and the ORA to admit Testimony, Stipulations, and Exhibits into the Record are admitted into the record.

3. GOW Corporation is granted authority to acquire and control Great Oaks Water Company as part of an overall corporate reorganization of Great Oaks Water Company pursuant to the terms of the Settlement Agreement between GOW Corporation, Great Oaks Water Company, and the Office of Ratepayer Advocates.

4. No hearings are necessary.

5. Application 14-04-035 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.